

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
 ) 8:05CR288  
Plaintiff, )  
 )  
v. ) MEMORANDUM AND ORDER  
 )  
ALLEN GREEN, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_

This matter is before the court on the defendant's pro se motion for reconsideration of the court's earlier order denying his motion for a reduction of his sentence under the Fair Sentencing Act of 2010 ("FSA"), which reduced sentencing disparity between crack cocaine and powder cocaine offenses, lowering the statutory sentencing ratio from 100:1 to 18:1. See Pub. L. 111-220, 124 Stat. 2372 (Aug. 3, 2010). The Eighth Circuit Court of Appeals has determined that the FSA is not retroactively applicable to sentences determined before its enactment. *United States v. Orr*, 636 F.3d 944, 957-58 (8th Cir. 2011).

Although the United States Supreme Court has recently granted certiorari to resolve the issue of whether the FSA's provisions apply to defendants whose conduct occurred prior to the act but had not been sentenced when the FSA became law, the defendant would not benefit from a beneficial ruling on that issue since both the defendant's conduct and his sentencing occurred long before the FSA was enacted. See *Hill v. United States*, 417 F. App'x 560 (7th Cir. 2011), *cert. granted*, — S. Ct. —, 2011 WL 3472365 (U.S. Nov. 28, 2011) (No. 11-5721), and *United States v. Fisher*, 635 F.3d 336 (7th Cir. 2011), *cert. granted sub nom Dorsey v. United States*, — S. Ct.—, 2011 WL 3422126 (U.S. Nov. 28,

2011) (No. 11-5683). Accordingly, the court finds that the motion for reconsideration should be denied.

IT IS ORDERED:

1. The defendant's motion to reconsider (Filing No. 160) is denied.
2. This action is dismissed.

DATED this 7<sup>th</sup> day of March, 2012.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge